

**RESOLUTION IN SUPPORT OF  
THE EMPLOYMENT AND HOUSING  
NON-DISCRIMINATION ACT  
IN THE WEST VIRGINIA LEGISLATURE**

*Resolution\_\_\_\_\_by*

*City of Morgantown Human Rights Commission*

*December 19, 2013*

# **MORGANTOWN HUMAN RIGHTS COMMISSION RESOLUTION ON WEST VIRGINIA EMPLOYMENT AND HOUSING NON- DISCRIMINATION ACT**

## **Background: Protecting Gay, Lesbian, and Transgender People from Discrimination in Employment and Housing Has Become Mainstream Politics**

*Whereas*, according to a January 2010 poll from Greenberg Quinlan, 61% of West Virginians “favor protecting gay and lesbian people from discrimination in employment and housing;”<sup>1</sup>

*Whereas*, as of June 19, 2013, twenty-one states and the District of Columbia have passed laws prohibiting employment discrimination because of sexual orientation;<sup>2</sup>

*Whereas*, as of June 19, 2013, seventeen states and the District of Columbia have passed laws prohibiting employment discrimination because of gender identity;<sup>3</sup>

*Whereas*, as of June 19, 2013, seventeen states and the District of Columbia have passed laws prohibiting housing discrimination because of sexual orientation and gender identity; *ibid*

*Whereas*, as of July 15, 2013, 170 cities in the United States have passed ordinances prohibiting housing discrimination because of sexual orientation and gender identity; *ibid*

*Whereas*, “[a]s of April 2013, 434 (88 percent) of the Fortune 500 companies had implemented non-discrimination policies that include sexual orientation, and 282 (57 percent) had policies that include gender identity;”<sup>4</sup>

*Whereas* the West Virginia AFL-CIO and the United Mine Workers have publicly endorsed state legislation prohibiting discrimination in employment and housing because of sexual orientation;<sup>5</sup>

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<sup>1</sup>See WVGAZETTE.COM, *Equality: Human Rights for Gays*, THE CHARLSTON GAZETTE, Mar. 13, 2013, <http://www.wvgazette.com/Opinion/201303130110>.

<sup>2</sup> These states are: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Maine, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Nevada, Oregon, Rhode Island, Vermont, Washington, and Wisconsin. See HUMAN RIGHTS CAMPAIGN, STATEWIDE EMPLOYMENT LAWS AND POLICIES, [http://www.hrc.org/files/assets/resources/employment\\_laws\\_062013.pdf](http://www.hrc.org/files/assets/resources/employment_laws_062013.pdf).

<sup>3</sup> These are the same states that passed laws prohibiting discrimination because of sexual orientation except for Maryland, New Hampshire, New York, and Wisconsin. See HUMAN RIGHTS CAMPAIGN, STATEWIDE EMPLOYMENT LAWS AND POLICIES, [http://www.hrc.org/files/assets/resources/employment\\_laws\\_062013.pdf](http://www.hrc.org/files/assets/resources/employment_laws_062013.pdf)

<sup>4</sup>See HUMAN RIGHTS CAMPAIGN, EMPLOYMENT, HOUSING NON-DISCRIMINATION ACT, <http://www.hrc.org/laws-and-legislation/federal-legislation/employment-non-discrimination-act>.

**The United States Congress Is Currently Considering Amending  
Title VII of the Civil Rights Act to Prohibit Workplace Discrimination  
Because of Sexual Orientation and Gender Identity**

**Employment Non-discrimination Act of 2013  
U.S. Senate Bill 815**

*Whereas* on April 25, 2013, Senator Jeff Merkely [D-Oregon] introduced Senate Bill 815, the Employment Non-discrimination Act of 2013 (ENDA 2013), a bill which “[p]rohibits employment discrimination on the basis of actual or perceived sexual orientation or gender identity by covered entities (employers, employment agencies, labor organizations, or joint labor-management committees);”<sup>6</sup>

*Whereas* 56 United States senators, including Senator Jay Rockefeller [D-West Virginia], co-sponsored S.B. 815;<sup>7</sup>

*Whereas* two Republican senators and two Independent senators were among S.B. 815’s co-sponsors;<sup>8</sup>

*Whereas* on November 7, 2013, the Senate passed S.B. 815 by a vote of 64-32, with four senators not voting;<sup>9</sup>

*Whereas* S.B. 815 received bipartisan support in the Senate, including the support of 52 Democratic, 10 Republican and 2 Independent senators;<sup>10</sup>

*Whereas* both senators from West Virginia, Senator Jay Rockefeller and Senator Joe Manchin, voted in favor of S.B. 815;<sup>11</sup>

**Employment Non-discrimination Act of 2013  
U.S. House Bill 1755**

*Whereas* on April 25, 2013, Rep. Jared Polis [D-Colorado] introduced House of Representatives Bill 1755 (H.R. 1755), ENDA 2013;<sup>12</sup>

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<sup>5</sup> See Ry Rivard, *Unions Support Anti-discrimination Bill*, CHARLESTON DAILY MAIL, Feb. 9, 2012, available at <http://www.dailymailwv.com/News/statehouse/201202080227>.

<sup>6</sup> See Summary of S. 815, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/bills/113/s815#summary/libraryofcongress> (last visited Nov. 29, 2013).

<sup>7</sup> See Overview of S. 815, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/bills/113/s815#overview> (last visited Nov. 29, 2013).

<sup>8</sup> See On Passage of S. 815 in the Senate, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/votes/113-2013/s232> (last visited Nov. 30, 2013).

<sup>9</sup> See Overview of S. 815, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/bills/113/s815#overview> (last visited Nov. 29, 2013).

<sup>10</sup> See On Passage of S. 815 in the Senate, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/votes/113-2013/s232> (last visited Nov. 30, 2013).

<sup>11</sup> See On Passage of S. 815 in the Senate, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/votes/113-2013/s232> (last visited Nov. 30, 2013).

*Whereas* H.R. 1755 has 200 co-sponsors, including five Republican representatives;<sup>13</sup>

*Whereas* on April 25, 2013, H.R. 1755 was referred to committee where it currently remains;<sup>14</sup>

**W.V. Employment and Housing Non-discrimination Act Amends the  
West Virginia Human Rights Act to Prohibit Discrimination in  
Employment and Housing Because of Sexual Orientation**

*Whereas* The West Virginia Human Rights Act (WVHRA) codified at § 5-11-1 to § 5-11-20 currently prohibits covered employers from discriminating because of “race, religion, color, national origin, ancestry, sex, age, blindness, or disability,” but does not prohibit such discrimination because of sexual orientation;<sup>15</sup>

*Whereas* the WVHRA currently prohibits discrimination in public accommodation on the basis of “race, religion, color, national origin, ancestry, sex, blindness, disability or familial status,” but does not prohibit such discrimination because of sexual orientation;<sup>16</sup>

*Whereas* the WVHRA created the West Virginia Human Rights Commission to enforce rights established by the WVHRA;<sup>17</sup>

*Whereas* The West Virginia Fair Housing Act (WVFHA) codified at § 5-11A-1 to § 5-11A-20 currently prohibits various unfair housing practices because of “race, color, religion, ancestry, sex, familial status, blindness, handicap or national origin,” but does not prohibit such discrimination because of sexual orientation;<sup>18</sup>

*Whereas* the West Virginia legislature has several times attempted to amend the WVHRA by virtue of the West Virginia Employment and Housing Nondiscrimination Act (WVEHNDNA);

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<sup>12</sup> See Summary of H.R. 1755, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/bills/113/hr1755> (last visited Nov. 30, 2013).

<sup>13</sup> See Summary of H.R. 1755, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/bills/113/hr1755> (last visited Nov. 30, 2013).

<sup>14</sup> See Summary of H.R. 1755, Employment Non-Discrimination Act, available at <https://www.govtrack.us/congress/bills/113/hr1755> (last visited Nov. 30, 2013).

<sup>15</sup> W.V. CODE, § 5-11-2. A current version of the WVHRA is available on-line at <http://www.legis.state.wv.us/WVCODE/code.cfm?chap=05&art=11>.

<sup>16</sup> W.V. CODE, § 5-11-2.

<sup>17</sup> See W.V. CODE, §§ 5-11-4, 5-11-8.

<sup>18</sup> A current version of the WVFHA is available on-line at <http://www.legis.state.wv.us/WVCODE/code.cfm?chap=05&art=11A>.

*Whereas* the WVEHNDA would prohibit employment, public accommodation, and housing discrimination because of sexual orientation;

*Whereas*, on March 7, 2013, West Virginia Delegates Skinner, Morgan, Ferns, Hunt, Sponaugle, Poore, Perdue, Fleischauer, Moore, Marshall and Barrett re-introduced the WVEHNDA;<sup>19</sup>

*Whereas*, on March 8, 2013, West Virginia Senate President Kessler and Senators Snyder, Palumbo, Wells, Beach, McCabe, Edgell, Fitzsimmons, and Cookman;<sup>20</sup>

*Whereas* the current version of the WVEHNDA bill exempts religious organizations and affiliated corporations from employment discrimination;<sup>21</sup>

*Whereas* the current version of the WVEHNDA bill exempts small businesses defined as businesses that employ fewer than 15 employees;<sup>22</sup>

**West Virginia Employment and Housing Non-discrimination Act  
Would Merely Extend to the State Level What Is Already Occurring at  
Other Governing Levels**

*Whereas* a Charleston city ordinance already forbids discrimination in employment and housing based on an individual's sexual orientation.<sup>23</sup>

*Whereas* a Morgantown city ordinance has established a Human Rights Commission with the following purpose among other purposes:

The Commission . . . shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of . . . sexual orientation . . . , and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of . . . sexual orientation . . . .<sup>24</sup>

*Whereas* the West Virginia University Board of Governors policy on Affirmative Action and Equal Employment Opportunity is to "[r]ecruit, hire,

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<sup>19</sup> See H.B. 2856. A current version of this bill is available at [http://www.legis.state.wv.us/Bill\\_Status/bills\\_text.cfm?billdoc=hb2856%20intr.htm&yr=2013&sesstype=RS&i=2856](http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=hb2856%20intr.htm&yr=2013&sesstype=RS&i=2856).

<sup>20</sup> See S.B. 486. A current version of this bill is available at [http://www.legis.state.wv.us/Bill\\_Status/bills\\_text.cfm?billdoc=sb486%20intr.htm&yr=2013&sesstype=RS&i=486](http://www.legis.state.wv.us/Bill_Status/bills_text.cfm?billdoc=sb486%20intr.htm&yr=2013&sesstype=RS&i=486).

<sup>21</sup> See proposed W.V. CODE, § 5-11-3(d) (amending definition of employer):

*Provided, however,* That this article, with regards to sexual orientation, shall not apply to a corporation, association, educational institution or institution of learning, or society that is exempt from the religious discrimination provisions of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.) pursuant to section 702(a) or 703(e)(2) of such Act (42 U.S.C. 2000e-1(a), 2000e-2(e)(2)), except in the operation of a program funded by the state.

<sup>22</sup> See *supra* proposed W.V. CODE, § 5-11-3(d) (amending definition of employer).

<sup>23</sup> See CHARLESTON MUN. CODE § 86-261 (2008).

<sup>24</sup> See MORGANTOWN MUN. CODE § 153.07.

train, promote, retain and compensate all individuals in [listed] job titles without regard to . . . sexual orientation,” among other protected categories;<sup>25</sup>

Now, therefore, BE IT RESOLVED that the City of Morgantown Human Rights Commission affirms its support of prohibiting discrimination because of sexual orientation in employment, public accommodation, and housing; and

BE IT FURTHER RESOLVED that the City of Morgantown Human Rights Commission calls on our West Virginia state legislators to sponsor and vote for legislation that prohibits discrimination because of sexual orientation in employment, public accommodation, and housing.

BE IT FURTHER RESOLVED that the City of Morgantown Human Rights Commission calls on our the City of Morgantown to concur in this resolution.

Adopted by the HRC this 2nd day of December, 2013.

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**Don Spencer**  
**Chairperson**

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**Jan Derry**  
**Vice Chairperson**

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**Anna-Marlene Robinson-Savino**  
**Secretary**

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**Mike Fike**  
**Board Member**

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**Anne Marie Lofaso**  
**Board Member**

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**Fran Whiteman**  
**Board Member**

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**Vacant**  
**Board Member**

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<sup>25</sup> See W. Va. Univ. Bd. of Govs. Pol’y 34: Affirmative Action and Equal Employment Opportunity § 2-1 (2006), available at <http://bog.wvu.edu/r/download/4239> (last visited Nov. 29, 2013).